

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EVARISTUS MACKEY,

Plaintiff,

v.

Warden ESTRADA, *et al.*,

Defendants.

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CIVIL NO. 1:CV-06-0156

(Judge Caputo)

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff Evaristus Mackey commenced this *pro se* action on January 20, 2006 with a *Bivens*¹ civil rights complaint (Doc. 1). At the time of filing, he was an inmate at the United States Penitentiary in Lewisburg, Pennsylvania. Currently, Plaintiff is confined at the Victorville United States Penitentiary in Adelanto, California. An Amended Complaint (Doc. 10) was filed pursuant to this Court's February 17, 2006 Order (Doc. 9).

Presently pending before this Court is Defendants' "Motion to Dismiss, or in the Alternative, for Summary Judgment" (Doc. 19). On January 11, 2008, Plaintiff filed a document entitled "Response to Defendants Motion to Dismiss or, in the Alternative, for Summary Judgment and, Plaintiff Supplement Adding Defendant Dodrill" (Doc. 22). In his submission, Plaintiff states that he seeks to add a Defendant to this action and makes allegations against Mr. Dodrill. To the extent that Plaintiff seeks to amend his complaint to

1. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). *Bivens* stands for the proposition that "a citizen suffering a compensable injury to a constitutionally protected interest could invoke the general federal question jurisdiction of the district court to obtain an award of monetary damages against the responsible federal official." *Butz v. Economou*, 438 U.S. 478, 504 (1978).

add a new Defendant, he will be required to seek leave to do so as required by FED. R. CIV. P. 15(a).

Plaintiff's submission does not conform with the requirements for opposing a motion for summary judgment. In the event that Plaintiff chooses not to seek leave to file an amended complaint, he will be required to file his opposition to Defendants' "Motion to Dismiss, or in the Alternative, for Summary Judgment" (Doc. 19) in conformance with FED. R. CIV. P. 56(e) and M.D. PA. L.R. 56.1. Plaintiff should consult the Standing Practice Order issued in this case (Doc. 5) for those requirements.

NOW, THEREFORE, THIS 18th DAY OF JANUARY, 2008, IT IS ORDERED AS FOLLOWS:

1. Within fifteen (15) days from the date of this Order, Plaintiff shall either:
 - (a) file a Motion for leave to file an amended complaint pursuant to FED. R. CIV. P. 15(a), or
 - (b) file his opposition to Defendants' "Motion to Dismiss, or in the Alternative, for Summary Judgment" (Doc. 19) in conformance with FED. R. CIV. P. 56(e) and M.D. PA. L.R. 56.1.
2. In the event that Plaintiff fails to comply with this Order, this Court will deem Defendants' Motion to be unopposed.

s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge